

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
GRANTING MOTIONS FOR EXEMPTION ELIGIBILITY**

**I. Summary**

This ruling grants the motions, as identified below, of those parties seeking to be granted eligibility to claim exemption from the "Cost Responsibility Surcharge" (CRS) that is otherwise applicable to Municipal Departing Load (MDL) customers. Motions were filed on March 16, 2006, by Port of Stockton (Port), City of Corona (Corona), City and County of San Francisco (CCSF), and Hercules Municipal Utility (Hercules). These motions were filed pursuant to the process authorized in Decision (D.) 06-03-004 for publicly-owned utilities (POUs)<sup>1</sup> to be added to the list that is eligible to apply for exemption from the MDL CRS on behalf of their customers.

For customers of a POU to qualify for the CRS exemption, the POU had to be providing electricity to at least 100 retail end use customers as of July 10, 2003.

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<sup>1</sup> The term "publicly-owned utility" refers to entities as defined in Pub. Util. Code § 9604(d).

In D.04-11-014, the Commission established an initial list of POUs that met the criteria for the CRS exemption, but recognized that additional POUs may also meet those CRS exemption criteria.

Pursuant to D.06-03-004, POUs seeking to be placed on the exemption eligibility list were directed to file a motion, with a sworn affidavit from a responsible officer or employee of the company, attesting that the POU was serving at least 100-retail customers as of July 10, 2003. Each of the POUs identified below has provided satisfactory confirmation that it meets the requisite criteria. Their motions are thus granted, as discussed below.

## **II. Port of Stockton**

### **A. Parties' Positions**

The Port filed a motion seeking exemption eligibility. In support of the motion, the Port provided the affidavit of Jeff Kaspar, Deputy Port Director of Properties and Environmental. Kaspar affirmed that the Port has owned and operated a 12 kV electric distribution system since July 2000, and was serving at least 100 retail customers on July 10, 2003.

PG&E filed a response on March 14, 2006, to Port of Stockton's motion, arguing that the Port has not complied with D.06-03-004. PG&E argues that the Port's affidavit uses different language from that which was set forth in D.06-03-004 concerning eligibility criteria. PG&E interprets the language used in the Port's affidavit as allowing for the possibility that some of the 100 customers referenced therein were not receiving retail electric service, but other sorts of services, from the Port. PG&E therefore claims that the Port has not provided the proper assurances that the 100-customer criterion is satisfied.

According to PG&E, based on descriptions in the Port's website, much of Rough and Ready Island (where the Port's electric distribution system is located)

was “open land” and “mostly undeveloped” in the 2002-2003 timeframe. PG&E thus questions the Port’s claims, and requests that the Energy Division audit Port of Stockton’s records to confirm that it meets the requisite criteria for CRS exemption eligibility.

The Port filed a reply on March 17, 2006, together with a motion to strike PG&E’s response as being in violation of the process adopted in D.06-03-004. The Port asked for sanctions against PG&E based on the claim that PG&E had abused the process outlined in D.06-03-004 by filing a response challenging its motion before, rather than after, the ALJ ruling issued. The Port argues that its original affidavit complied with D.06-03-004, confirming that the 100 customers referenced therein did, in fact, receive retail electric service from the Port as of July 10, 2003. Nonetheless, the Port attached a supplemental affidavit to provide clarifying language affirming this fact.

The Port also denies PG&E’s claims concerning the lack of customers on Rough and Ready Island. The Port asserts that while much of the 1,400-acre island is undeveloped, approximately 500 acres are developed with 40 large warehouses and employing 1,500 people.

PG&E filed a response to the Port’s motion to strike, arguing that PG&E’s response did not violate D.06-03-004, and defending its request for an audit. PG&E claims that its motion was not intended to question the truthfulness of Kaspar’s affidavit, but merely questioned whether the affidavit was properly interpreting the criteria.

## **B. Discussion**

It is concluded that further information is needed as a basis to rule upon whether the Port meets the requisite criteria for CRS exemption eligibility.<sup>2</sup> A ruling on whether to grant the Port's Motion for exemption eligibility status shall be deferred pending further inquiry by the Energy Division. Any confidential material submitted pursuant to this inquiry shall be subject to Pub. Util. Code § 583.

It is further concluded PG&E did not violate provisions of D.06-03-004 in filing its response prior to the issuance of an ALJ ruling. Although D.06-03-004 did not explicitly call for the filing of responses to motions prior to an ALJ ruling, neither did the Decision prohibit the filing of such responses. Moreover, the Commission's Rules of Practice and Procedure generally permit the filing of responses to motions. Accordingly, the Port's Motion to Strike and for sanctions against PG&E is denied.

## **III. City of Corona**

### **A. Parties' Positions**

City of Corona filed a motion for CRS exemption eligibility, supported by an affidavit by George Hanson, Assistant General Manager of Corona Department of Water and Power. Corona's electric utility was established in April 2001 under Public Utilities Code Section 10001, and began providing bundled electric utility service to retail customers in January 2003, and has continued to serve both bundled and direct access retail customer since then.

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<sup>2</sup> The motion of the Port of Stockton, dated March 21, 2006, to file its additional reply is granted.

SCE filed a response on March 24, 2006, to the Motion of Corona, taking exception on certain points. SCE argues that the exemption eligibility authorized in D.06-03-004 only applies to the DWR Power Charge, but not to all other elements of the CRS, as implied in the Corona Motion. SCE also requests that Corona be required to supplement or revise its supporting affidavit to affirm that, as of July 10, 2003, Corona was providing electricity to 100 or more retail end-use customers located within SCE's service territory. SCE argues that it is unclear from the affidavit as to whether some of the 100 customers referenced by Corona may be located outside of SCE's service territory. SCE argues that this additional confirmation that all 100 customers are located within SCE service territory boundaries is consistent with the requirements of D.06-03-004.

Finally, SCE argues that clarification is needed as to whether a POU customer that is found eligible for a CRS exemption "is permitted the option to claim it." SCE also seeks guidance on how the megawatt (MW) or megawatt hour (MWH) cap on the exemptions will be administered if a POU found eligible for the DWR Power Charge exemption is permitted to elect to claim it, or not, at some point in the future.

Corona filed a reply to SCE's response on March 31, 2006, disputing SCE's interpretation that D.06-03-004 requires an affirmative statement that Corona's 100 customers were all located within SCE's service territory. Nonetheless, Corona supplied a supplemental affidavit affirming that all of the 100 customers were located within SCE's service territory, in the interests of "finally closing out this process."

CMUA also filed a reply to SCE's response. CMUA agrees with Corona that D.06-03-004 did not require an affidavit to explicitly state that all 100 customers reside within a particular IOU's service territory. An outstanding

issue in this proceeding is whether MDL customers that are *not* assessed a DWR power charge receive credit for utility retained generation costs that are excluded from the statutory “competition transition charge” (CTC). CMUA explains that, depending on how the Commission resolves this dispute, MDL customers could actually be responsible for a higher charge by claiming the CRS exemption. CMUA thus argues that it is reasonable for POUs to await the Commission’s resolution of this dispute before making an election as to whether to claim the CRS exemption.

## **B. Discussion**

The limited purpose of this ruling is to grant or deny the motions for exemption eligibility. This ruling is not the proper vehicle through which to address or resolve disputes over the interpretation of D.06-03-004. If parties believe that D.06-03-004 is not sufficiently clear or that modifying language is needed, the proper vehicle would be a petition for modification.

It is concluded that Corona’s motion and its supporting affidavits provide sufficient basis for a ruling that Corona meets the eligibility exemption criteria. Based upon its initial and supplemental affidavit, Corona’s motion is hereby granted.

The questions raised by SCE concerning whether a POU customer found eligible for a CRS exemption is permitted the option to claim it, and how the cap on exemptions will be administered, as a result, is beyond the scope of this ruling. Those questions will be addressed in connection with the Commission’s resolution of how CRS is calculated for MDL customers.

#### **IV. City and County of San Francisco**

##### **A. Parties' Positions**

The City and County of San Francisco (CCSF) filed a motion seeking CRS exemption eligibility. CCSF attached the affidavit of Barbara Hale, Assistant General Manager of Power. Hale affirms that CCSF, through the Power Enterprise of the SF Public Utilities Commission, "served well over 100 customers in or around San Francisco" pursuant to "an interconnection agreement with PG&E." (CCSF affidavit, page 1.)

PG&E filed a response to the CCSF motion on April 3, 2006. PG&E does not dispute the veracity of the CCSF statements, but questions whether the Commission intended to extend the limited CRS exemptions to the types of electric service that CCSF provides. PG&E indicates that it provides FERC-jurisdictional service to CCSF, which, in turn, bills other tenant, most city departments, for their electric usage. PG&E states that the type of electric service provided by CCSF "is distinguishable from direct access (DA) service, whereby PG&E provides CPUC-jurisdictional service to numerous end-use customers." PG&E requests that the Commission confirm that it intended to extend the limited CRS exemptions to the types of electric service arrangements that CCSF provides.

On April 5, 2006, CMUA filed a reply to PG&E's response. CMUA states that it is not clear on what basis PG&E objects to the type of electric service offered by CCSF. CMUA argues that PG&E fails to explain why the type of service provided to CCSF is distinguishable from other scenarios involving wholesale distribution service to POUs. As noted by CMUA, DA service is not necessarily the only variation on the type of electric service that may be offered

by a POU to qualify for CRS exemption eligibility under the 100-customer criterion.

## **B. Discussion**

It is concluded that further inquiry is needed as a basis to rule upon whether CCSF meets the requisite criteria for exemption eligibility. A ruling on whether to grant CCSF's motion shall be deferred pending further inquiry by the Energy Division. Any confidential material provided pursuant to this inquiry shall be subject to Pub. Util. Code § 583.

## **V. Hercules Municipal Utility**

### **A. Parties' Positions**

Hercules filed a motion seeking a ruling that it meets the criteria for claiming CRS exemption eligibility. In support of its motion, Hercules submitted a sworn affidavit of Mike Sakamoto, General Manager of Hercules Municipal Utility. Sakamoto affirmed that Hercules' electric utility was established in January 2001 under Public Utilities Code Section 10001, and began providing bundled electric utility service to retail customers in January 2003, and continues to serve such customers. Sakamoto affirmed that Hercules was serving at least 100 retail electric customers as of July 10, 2003. Hercules indicated that it would decide as to whether actually to apply for the exemption after the Commission issues its decision regarding outstanding disputes concerning how to calculate the CRS for MDL customers.

PG&E filed a response to the Hercules motion. PG&E does not dispute that Hercules provides the type of electric service to at least some customers, but PG&E has not been able to confirm through its own records that the 100-customer criterion is met. PG&E thus requests that the Commission's



Energy Division exercise its discretion to conduct an audit to confirm Hercules' eligibility for the CRS exemption eligibility.

**B. Discussion**

The motion of Hercules is granted. Other than the fact that PG&E has not been able to confirm independently the count of Hercules, PG&E has not presented anything that would suggest that Hercules has not presented accurate statements in its affidavit. The Hercules affidavit provides the requisite confirmation. The Energy Division will not conduct an audit of Hercules operations.

**IT IS RULED that:**

1. The motions filed, respectively, by the City of Corona, and Hercules Municipal Utility for eligibility to seek exemption from a Cost Responsibility Surcharge are hereby granted.
2. Further inquiry shall be conducted as a basis to rule upon whether City and County of San Francisco and Port of Stockton meet the requisite criteria for eligibility to seek exemption from CRS. A ruling on whether to grant CCSF's or the Port's motions shall be deferred pending further inquiry by the Energy Division. Any confidential material provided pursuant to this inquiry shall be subject to § 583.
3. Energy Division shall report back to the Assigned Commissioner and Administrative Law Judge on the status of their inquiry concerning CCSF and the Port of Stockton within 30 days of this ruling.
4. The motion of the Port of Stockton to strike the response of Pacific Gas and Electric Company and for sanctions is hereby denied.
5. The motion of the Port of Stockton to file its additional reply, dated March 21, 2006, is granted.

6. Questions raised by parties concerning how the Cost Responsibility Surcharge (CRS) exemption is calculated and how the exemption cap will be administered are beyond the scope of this ruling and will be addressed in the Commission's resolution of disputes over CRS calculation methodologies.

Dated April 21, 2006, at San Francisco, California.

/s/ THOMAS R. PULSIFER

Thomas R. Pulsifer  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Granting Motions for Exemption Eligibility on all parties of record in this proceeding or their attorneys of record.

Dated April 21, 2006, at San Francisco, California.

          /s/          FANNIE SID            
                          Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.